BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ROBECKA L. ELLEDGE)
Claimant VS.)
) Docket No. 245,237
DONNA JO NEUSSEN)
Respondent)
AND)
)
WAUSAU INSURANCE COMPANIES and)
COMMERCIAL UNION INSURANCE COMPANY)
Insurance Carrier)

ORDER

Respondent and Wausau Insurance Company (Wausau) appeal from a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on December 21, 1999.

Issues

The issue on appeal is the date of accident or, stated another way, whether claimant's current need for preliminary hearing benefits is a natural and direct consequence of an injury claimant suffered while working for respondent during Wausau's period of coverage or whether, instead, claimant thereafter suffered a new accident and injury during the period that insurance coverage was with Commercial Union Insurance Company (Commercial Union). The second injury would also have been while working for respondent.

Respondent and Commercial Union argue this appeal fails to raise an issue which the Board has jurisdiction to review on an appeal from a preliminary hearing order and should, therefore, be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the issues raised on appeal are not jurisdictional issues. As a consequence, the Board does not have jurisdiction to review those issues at this stage of the proceedings.

On an appeal from a preliminary hearing order, the Board is limited to review of allegations that the Administrative Law Judge exceeded his/her jurisdiction. K.S.A. 1999 Supp. 44-551. This includes review of issues identified in K.S.A. 1999 Supp. 44-534a as jurisdictional issues. On the current appeal, there is no dispute that claimant's current need for temporary total disability compensation and medical treatment is the result of an injury that arose out of and in the course of her employment with respondent. The only questions are date or dates of accident, whether claimant suffered one accident or two, and, as a result, which insurance carrier is liable for benefits. Wausau contends the Administrative Law Judge erred when he found a single accident and a date of accident during its period of coverage. This contention does not raise one of the issues identified in K.S.A. 1999 Supp. 44-534a and does not otherwise constitute an allegation that the Administrative Law Judge exceeded his jurisdiction.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of the preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on December 21, 1999, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this	day of March 2000.

BOARD MEMBER

c: Terry L. Pullman, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Kendall R. Cunningham, Wichita, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director